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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,330	02/20/2004	Hartan B. Cosner	COS-2.009	6905
22874	7590	06/16/2004	EXAMINER	
BRADLEY M GANZ, PC			BELL, KENT L	
P O BOX 10105			ART UNIT	
PORTLAND, OR 97296			PAPER NUMBER	
			1661	

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/783,330	Applicant(s) COSNER ET AL.	
	Examiner Kent L. Bell	Art Unit 1661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- application filed 2/20/04*
- 1) ☒ Responsive to ~~communication(s) filed on~~ application filed 2/20/04.
- 2a) ☐ This action is FINAL.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/24/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

*K.L. Bell*

**Detailed Action**

**Objection to the Disclosure**

**37 CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

**35 USC 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

### **Detailed Action**

In plant applications filed under 35 U.S.C 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

A. Page 1, line 5, Applicant should set forth the cultivar name without italics.

B. Page 1, line 23, Applicant states seed parent was "Pink" and pollen parent was "Lavender". It is not understood whether the entire seed parent is pink in coloration and the entire pollen plant is lavender in coloration or if their respective flowers are pink and lavender in coloration. Correction and/or clarification is necessary.

**Detailed Action**

C. Applicant should set forth in the specification a brief comparison between the instant plant and its parent cultivars, 'P-BR-131' and 'M-BR-203'. Such comparison need not be in any great detail but should at least distinguish the plants from one another. The recitation "seed parent was Pink and the pollen parent was Lavender" on page 1, line 23 is insufficient in this regard.

D. Page 2, lines 1 and 2, Applicant states the instant plant was first asexually reproduced but does not set forth the manner in which it was asexually reproduced. Applicant should set forth in the specification the manner in which the instant plant was first asexually reproduced (MPEP ). It is noted that applicant has stated "successive asexual generations produced from cuttings" but this does not set the manner in which the instant plant was first asexually reproduced.

E. Page 2, lines 2 and 3, Applicant should insert - -and reproduced true to type- - after "stable", if such is accurate, as the instant plant needs to be an exact duplicate of the original 'TiLav Improved' cultivar.

F. Page 2, line 9, Applicant should delete "US PP" and insert - -U.S. Plant Patent- - so as to clearly set forth that the U.S. Patent being referred to is a U.S. Plant Patent.

**Detailed Action**

G. Page 3, lines 4 and 5, Applicant should set forth in the specification the age of the plants when described.

H. Page 4, lines 9-14, Applicant should set forth in the specification additional information relative to the instant plant's stems including the typical and observed stem length.

I. Page 5, line 21, and page 7, Chart 1, lines 27 and 28, Applicant states "deep". It is unclear what applicant is intending "deep" to mean. It appears applicant may have intended to state - -long- -. Correction and/or clarification is necessary.

J. Page 5, line 21, and page 7, Chart 1, lines 27 and 28, Applicant should set forth in the specification the typical and observed petal and petaloid length.

K. Page 5, lines 21-24, and page 7, Chart 1, lines 27 and 28, Applicant should set forth in the specification additional information relative to the instant plant's petaloids including the typical and observed petaloid shape, length, width, and apex, base, and margin descriptors. The information set forth on lines 21-23 of the same page only refer to petals. It is noted that applicant has stated "Petal/Petaloid -Size" on line 27 of Chart 1 which is inconsistent with the information set forth on page 5, lines 21-24.

**Detailed Action**

L. Page 5, line 24, Applicant should delete “,” and insert -.- -.

M. Applicant should set forth in the specification information relative to the instant plant’s flowers including the typical and observed flower diameter and depth.

N. Applicants state in the specification the photographic illustration depicts the instant plant on page 2, lines 23 and 24. However, when compared to the photographic illustration provided, it appears there is a different cultivar denomination attached to the pot. It is uncertain whether the plant described in the specification is the same plant that is illustrated. If the plants are one and the same, applicants should clarify the designation set forth on the tag in the photographic illustration. It appears the designation may have been given to the instant plant during testing. If such is accurate, applicant should set forth this information into the specification. Correction and/or clarification is necessary.

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**Detailed Action**

**Future Correspondence**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached at (571) 272-0974.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

K. L. Bell

**KENT BELL  
PRIMARY EXAMINER**

*Kent L. Bell*